

April 25, 2005

Administrative Memorandum No. 4

Subject: Reconsideration of Committee Decisions

1. Purpose

This memorandum describes the procedures followed when the Committee staff becomes aware of new and pertinent information and/or received a request on the basis of new and pertinent information for the Committee members to reconsider an earlier decision which approved the addition or deletion of a commodity or service to the Procurement List. This memorandum supersedes Administrative Memorandum No. 4 on the same subject dated May 19, 1995.

2. General

a. A two step procedure will be followed when the Committee staff receives new and pertinent information that warrants a reconsideration of an earlier decision which added or deleted an item on the Procurement List.

i. The first step will be to determine if the new and pertinent information available to the Committee justifies further reconsideration. If a majority of Committee members determine that the new information does not justify further reconsideration, no further Committee action is required.

ii. If a majority of the Committee agrees that the new facts require further reconsideration, the Committee will decide whether to confirm its original decision or consider the possible re-addition or deletion of all or a portion of the item from the Procurement List.

b. New and pertinent information must constitute facts that were not previously available for consideration in the original addition or deletion decision. The Committee staff will evaluate any new and pertinent information to determine if such information was not previously available and/or is not relevant to the suitability criteria upon which the Committee based its original decision.

c. The Committee staff may determine that information available from any source is new and pertinent and bring that information to the attention of the Committee members as the first step of the reconsideration process described in paragraph a. above.

d. As a matter of policy, Committee members do not meet individually with current contractors or other persons interested in actions concerning Procurement List additions or deletions, including requests for reconsideration of the Committee's decision. These persons should be referred to the Committee staff so a presentation at a Committee meeting may be scheduled, as appropriate. The procedure for presentations by interested persons at Committee meetings is set forth in the Committee's regulations at 41 CFR 51-2.9, and Administrative Memorandum No., 2: Committee Meetings.

e. Unless otherwise provided by the Committee, requests for reconsideration must be received within 60 days following the effective date of the addition or deletion of the item to the Procurement List. The Committee Chairperson may waive the 60 day limitation based on the specific facts of the situation. A request for reconsideration must include the specific new and pertinent information believed to justify a decision of the Committee to modify or reverse its earlier decision.

3. Processing the Request

a. Upon receipt of new or pertinent information available for the Committee to reconsider its decision to add or delete an item on the Procurement List, the Committee staff will provide each Committee member with the following:

- (1) the information on which the original decision was made (i.e., original vote letter with attachments),
- (2) a copy of the letter(s) from the person requesting reconsideration or a summary of the new or pertinent information that is now available, and
- (3) any other new information which the Committee staff has obtained that bears directly on the request for reconsideration.

b. The above documents will be transmitted by a reconsideration vote letter which summarizes the information

attached thereto. The Committee members will be asked to decide whether or not the information now available to the Committee provides a basis for possibly overturning its earlier decision. The following criterion will apply: "If all of this information had been available when I voted to approve the addition or deletion of this item to the Procurement List, would I have voted to approve it?" If the answer to this question is "yes," the reconsideration is not justified; if the answer is "no," reconsideration is appropriate. The vote letter will normally provide the following options: "Reconsideration Not Justified" and "Reconsider Committee Decision." A member who votes to "Reconsider Committee Decision" should indicate the reasons for the vote, and the additional information he or she believes would assist in reconsidering the decision.

4. Reconsideration Not Justified

If a majority of the Committee members vote that further reconsideration of the Committee's earlier decision is not justified, the Committee staff will inform the interested parties that the Committee has reviewed its decision and decided the new facts in the case do not justify reconsideration of that decision.

5. Reconsider Committee Decision

a. If a majority of the Committee votes to reconsider the Committee decision, the Committee staff will take the following actions:

- (1) Review the comments accompanying the votes to reconsider the Committee decision,
- (2) Make these available to all the members, and
- (3) Place this item on the agenda for the next Committee meeting. Prior to the meeting, the Committee staff will discuss with the CNA the impact on the nonprofit agency concerned of the possible reversal of the earlier decision regarding all or a portion of the item, and will develop possible courses of action to propose to the Committee.

b. In reconsidering its decision, the Committee will balance the harm to the party requesting reconsideration if the item remains on the Procurement List against the harm which the nonprofit agency or its employees with disabilities would suffer if the item were deleted from the Procurement List (or vice versa

for re-adding an item to the Procurement List). The Committee may also consider information bringing into question its conclusions on the suitability criteria on which it based its original decision as factors weighing toward a decision for reversal of the decision, and information concerning possible harm to the contracting activity and the JWOD Program as factors weighing toward confirmation of the original decision. The Committee may decide at the meeting to reconfirm its original decision or to consider deleting (adding) all or a portion of the item from the Procurement List.

c. The Committee staff will, based on guidance from that meeting, prepare a vote letter to reconfirm the Committee's original decision or to obtain a Committee decision on the possible deletion of all or a portion of the item from the Procurement List. The vote letter will set forth the facts in the case and will include, as a minimum, a copy of the new and pertinent information, a copy of the minutes of the Committee meeting at which the reconsideration was discussed, and a written statement from the nonprofit agency concerned.

d. If the Committee votes to reconfirm the original decision, the Committee staff will notify interested persons of the Committee's decision.

e. If the Committee guidance favors re-addition or deletion, the Committee staff will publish a notice in the Federal Register of the proposed re-addition or deletion of the portion directed by the Committee, and after 30 days, prepare a vote letter to obtain a Committee decision on the proposed re-addition or deletion.

f. When the Committee's votes on the re-addition or deletion have been received, the Committee staff will notify in writing each Committee member, NIB or NISH, the procuring activity and other interested persons of the Committee's decision. A majority vote favoring the proposed re-addition or deletion is required for approval of the action. If the Committee approves the proposed action, a notice to this effect will be published in the Federal Register.

(signed)

Leon A. Wilson, Jr.
Executive Director